Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	
	)	
AMERITECH CORP.,	)	
Transferor,	)	
	)	
AND	)	
	)	
SBC COMMUNICATIONS INC.	)	CC Docket No. 98-141
Transferee,	)	
	)	
For Consent to Transfer Control of	)	
Corporations Holding Commission Licenses and	)	
Authorizations Pursuant to Section 214 and	)	
310(d) of the Communications Act and	)	
Parts 5, 22, 24, 25, 63, 90, 95 and 101	)	
Of the Commission's Rules	)	

To: The Commission

COMMENTS OF
THE ALARM INDUSTRY COMMUNICATIONS COMMITTEE

The Alarm Industry Communications Committee ("AICC"), by its attorneys, respectfully files these Comments in response to the proposed conditions of SBC Communications, Inc. ("SBC") and Ameritech Corporation ("Ameritech") submitted to the Commission in connection with their pending application for transfer of control of Ameritech to SBC.[1]

[1] Public Notice, DA 99-1305, released on July 1, 1999, required Comments on the proposed conditions to be filed by July 13, 1999. By Order released July 7, 1999, DA 99-1342, the Commission extended the filing deadline to July 19, 1999. These Comments therefore are timely filed.

Unfortunately, although the proposed conditions purport to address a host of public interest concerns,[2] not one addresses the underlying lawfulness of SBC's acquisition in the first instance. Because the Commission cannot approve a merger that would result in a violation of the Communications Act (here, Section 275), it must require that as a condition precedent to the proposed transfer, Ameritech divest ownership of SecurityLink to an independent, non-affiliated entity. Absent a condition requiring divestiture, the FCC would not only be approving a clear violation of the express terms of the Communications Act, but also would be irreparably harming the public interest as expressed by Congress.

AICC is a subcommittee of the Central Station Alarm Association, a trade association of alarm monitoring service providers, whose members provide monitoring for the majority of the alarm systems in the country. During the legislative deliberations culminating in the passage of the Telecommunications Act of 1996 ("1996 Act"), AICC represented the interests of the alarm industry and worked to obtain the inclusion in the 1996 Act of a special section regulating BOC provision of alarm monitoring services. Section 275(a)(1) establishes a five-year ban on BOC provision of alarm services in order to allow for the development of local competition. A narrow grandfathering clause was carved out in Section 275(a)(2) for any BOC providing alarm services as of November 30, 1995 – *i.e.,* Ameritech. *Only* Ameritech qualifies for the "grandfather exception."[3] Section 275 represents a Congressional compromise whereby the BOCs (except

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2 SBC and Ameritech submitted the proposed conditions in response to Chairman Kennard's April 1, 1999 letter explaining that the merger raises "serious concerns" with respect to promotion of the public interest.

3 *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, Second Report and Order, FCC 97-101, CC Docket No. 96-152 (rel. March 25, 1998), ¶ 33 ("*Second R&O*").

Ameritech) accepted a nationwide, five year moratorium on affiliation with alarm monitoring in exchange for a "date certain" time of entry with no Section 271-style entry test.

I. SBC TELEPHONE COMPANIES CANNOT BE AFFILIATES OF ALARM MONITORING PROVIDERS UNTIL FEBRUARY 8, 2001.

Section 275(a)(1) imposes a five year moratorium on participation in the alarm monitoring business by BOCs, either directly or through an "affiliate."[4] In the proposed merger, SBC will acquire control of Ameritech and, under the Communications Act, all SBC telephone companies will become "affiliates" of all Ameritech companies, including SecurityLink.[5] This is a clear and direct violation of Section 275(a)(1).

The only lawful exception to Section 275(a)(1) is the grandfather clause in Section 275(a)(2) for Ameritech.[6] The Commission has stated: "Since Ameritech is the only BOC that was authorized to provide alarm monitoring services as of November 30, 1995. . . *Ameritech is the only BOC that qualifies for 'grandfathered' treatment under section 275(a)(2).*"[7] This exception cannot be bought or sold.

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4 47 U.S.C. § 275(a)(1).

5 The Act defines "affiliate" as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." 47 U.S.C. § 153(1). As a result of the proposed merger, Ameritech will become a wholly-owned subsidiary of SBC. *See Application of Ameritech Corporation and SBC Communications Inc., for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Control of Ameritech Corporation, a Company Controlling International Section 214 Authorizations* (filed July 24, 1998); *Application of Ameritech Corporation and SBC Communications, Inc., for Authority, Pursuant to Part 24 of the Commission's Rules, to Transfer Control of a License Controlled by Ameritech Corporation* (filed July 24, 1998)(together "Merger Applications"). Thus, SBC will be an affiliate of Ameritech and of SecurityLink.

6 47 U.S.C. § 275(a)(2).

7 *Second R&O*, ¶ 33 (emphasis added). *See also Alarm Indus. Communications Comm. v. FCC*, 131 F.3d 1066, 1067 (D.C. Cir. 1997).

Ameritech and SBC have sought to present this situation as a conundrum: two provisions of the Communications Act, one that applies to SBC and one that applies to Ameritech, that upon merger of the companies, cannot be reconciled. They contend that a difficult question thus arises as to which provision should govern the combination. In an analogous scenario -- the Bell Atlantic/GTE merger proceeding – no such difficulty has been perceived. GTE is permitted to provide interLATA interexchange services under the 1996 Act, but its proposed merger partner, Bell Atlantic, is prohibited from providing interexchange services, pursuant to Section 271. In that case, it is so clear as to be undisputed that Bell Atlantic *would not* succeed to GTE's interLATA authority. Rather, it is Bell Atlantic's restriction, not GTE's, that would be controlling because a company under legal constraints cannot buy its way out of its obligations merely by purchasing another company which is not subject to the same legal restrictions. Similarly, in the instant case, SBC cannot simply buy Section 275's grandfathering provision which was expressly tailored and limited to Ameritech. Although Ameritech, like GTE, is authorized to provide a certain service at this time, SBC, like Bell Atlantic, may not evade its own restrictions through merger. Any other reading of the statute makes it a nullity obviously inconsistent with Congressional intent.

It is well-settled that when "one clause in a section renders another clause nugatory, it is time to put aside the dictionaries and start considering what interpretation best comports with Congressional intent."[8] Here, it appears that Congress wrote the moratorium for BOCs so as to "ensure a level playing field" between the BOCs and the independent alarm monitoring service

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[8] *Alarm Indus. Communications Comm.*, 131 F.3d at 1070, citing, *e.g.*, *Davis County Solid Waste Management v. EPA*, 101 F.3d 1395, 1404 (D.C. Cir. 1996); *Mail Order Ass'n of America v. United States Postal Serv.*, 986 F.2d 509, 515 (D.C. Cir. 1993).

providers.[9] Indeed, as Commissioner Ness has written, the meaning of Section 275(a)(2) involves "an effort to discern the logic of the underlying congressional policy."[10] As the only grandfathered BOC, Ameritech cannot pass its grandfathered status on to SBC, a BOC clearly prohibited from providing alarm services until February 8, 2001, thereby completely defeating the Congressional compromise embodied in the statute's moratorium period.

As AICC has explained previously in this docket, Section 275(a)(1) flatly prohibits a BOC (*i.e.*, SBC), directly or through an affiliate, from engaging in the provision of alarm monitoring services at this time. Much of the extent of this limitation on SBC is uncontested. Clearly, Section 275(a)(1) bars SBC from the outright purchase of SecurityLink from Ameritech. More importantly, however, the Commission already has ruled that, even in circumstances short of actual merger, the interests of a BOC (SBC) could be "so intertwined with the interests of an alarm monitoring services provider that the BOC itself" would be in violation of Section 275(a)(1).[11] As explained above, the acquisition of Ameritech would make SecurityLink an affiliate of SBC, and SBC an (unlawful) indirect provider of alarm monitoring services.

SBC and Ameritech contend that SBC's purchase of Ameritech "excuses" the unlawful acquisition of SecurityLink. In other words, they claim that SBC, by buying Ameritech, also buys for its BOCs the grandfather provision that applies to the Ameritech BOCs. In essence, SBC is attempting to "buy" its way out of Section 275 by purchasing the Ameritech BOCs *in addition to* SecurityLink. SBC and Ameritech have concocted a nonsensical argument that, because SBC is purchasing all of Ameritech, it becomes a "successor or assign" to Ameritech's

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9 H.R. Rep. No. 104-204, 104th Cong., 1st Sess., 87.

10 *In re Enforcement of Section 275(a)(2) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, Against Ameritech Corporation*, 12 FCC Rcd 3855, 3863-3864 (1997).

11 *Second R&O*, ¶ 38.

grandfathered status under Section 275(a)(2). The fact remains, however, that as a result of the proposed merger, SBC, as Ameritech's corporate parent, would itself become an "affiliate" of SecurityLink, and therefore an unauthorized provider of alarm monitoring services. As the FCC has emphasized, "[S]ection 275(a)(2) pertains exclusively to alarm monitoring activities by a grandfathered BOC [*i.e.*, Ameritech,] and, therefore, has no applicability to non-grandfathered BOCs"[12] -- in this context, SBC. In sum, once control of Ameritech passes to SBC, Ameritech effectively loses its grandfathered status, just as the merged Bell Atlantic-GTE loses GTE's exemption from Section 271. Any other result would be contrary to both the letter and the spirit of Section 275, and, indeed, would render Section 275(a)(1) meaningless.

II. THE COMMISSION MUST REQUIRE AMERITECH TO DIVEST SECURITY LINK AS A PRE-CONDITION TO THE PROPOSED MERGER IN ORDER TO CARRY OUT ITS RESPONSIBILITY TO ENFORCE SECTION 275.

Because the acquisition of Ameritech's alarm monitoring assets by SBC would violate Section 275(a)(1), as discussed above, the Commission must establish as a further pre-condition to the proposed merger that Ameritech divest SecurityLink. That is, control of SecurityLink must be transferred to an unaffiliated, non-BOC entity before consummation of the merger in order to comport with the express and mandatory terms of Section 275(a).[13] In truth, if the Commission approves the merger without requiring divestiture as a pre-condition, the agency

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12 *Id.*, ¶ 41.

13 A truly independent, non-affiliated entity would be one in which neither SBC nor Ameritech holds an option or other agreement to buy back the divested assets upon expiration of the moratorium (an arrangement which Ameritech has admittedly already created).

would be approving a blatant violation of the Act. This the Commission cannot lawfully do.[14] In this context, divestiture is the *only* means of preventing SBC's telephone companies from becoming unlawfully affiliated with SecurityLink, the nation's second largest provider of alarm monitoring services. To be sure, divestiture is a long-standing and accepted remedy to similar situations.[15] In fact, it is already a part of this merger in the context of compliance with cellular telephone regulations.[16]

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14 The Commission cannot abandon a Congressional statutory scheme simply because it believes it has a better idea. *See, e.g., MCI v. AT&T*, 114 S.Ct. 2223, 2231-32 n.4 (1994)("[the Supreme Court] (and the FCC) are bound, not only by the ultimate purposes Congress has selected, but by the means it has deemed appropriate, and prescribed, for the pursuit of those purposes.") Referring to an interpretation of a rate regulation statute proposed by the FCC, Justice Scalia wrote that although it "may be a good idea, [] it was not the idea Congress enacted into law in 1934." *See id.* at 2232.

15 *See, e.g., Lake Telephone Company*, 41 FCC 2d 335 (1973); *Fort Mill Telephone Company*, 25 FCC 2d 748 (1970); *The Petroleum V. Nasby Corporation*, 10 FCC Rcd 6029 (1995); *Spanish International Communications Corporation*, 2 FCC Rcd 3336 (1987).

16 *See* Merger Applications at 59-60 (SBC and Ameritech state that they will comply with the Commission's rules that require divestment of all ownership interests in one of the overlapping cellular licenses in the Chicago and St. Louis areas.)

CONCLUSION

AICC respectfully submits that the proposed merger conditions are deficient because they do not include as a pre-merger condition the divestiture of Ameritech's alarm monitoring interests. If SBC obtains control of Ameritech as proposed, SBC will obtain indirect control of Ameritech's alarm monitoring subsidiary, SecurityLink, and hence be "affiliated" with an alarm monitoring entity in direct violation of Section 275(a). Accordingly, AICC respectfully urges the Commission to require SBC and Ameritech, as a pre-condition to merger, to divest ownership of SecurityLink to a truly independent, non-affiliated entity.

Respectfully submitted,

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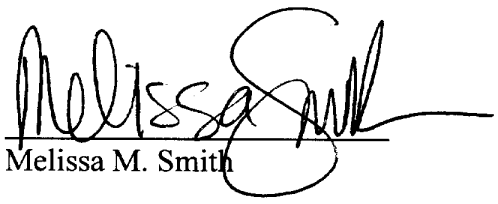

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